



STEVEN A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

BRAD HENRY
Governor

September 14, 2009

Kathy Gibson (6SF-VC)
USEPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: Tar Creek OU4

Dear Ms. Gibson:

Enclosed is the original copy of the State Superfund Contract for Tar Creek OU4 that has been signed by the Oklahoma Department of Environmental Quality. Please sign and return a copy to us for our files. If you have any questions, please contact me at (405) 702-5156.

Sincerely,

A handwritten signature in blue ink, appearing to be "K. Dixon", is written over a large, faint, circular watermark of the Seal of the State of Oklahoma.

Kelly Dixon
Environmental Programs Manager
Site Remediation Section

Enclosure

C: Ursula Lennox, EPA RPM



SUPERFUND STATE CONTRACT
FOR THE OPERATING UNIT 4 (OU-4) PHASE I
AT THE TAR CREEK SUPERFUND SITE, OTTAWA COUNTY, OKLAHOMA
BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

1. GENERAL AUTHORITY

This Superfund State Contract (hereinafter "Contract" or "SSC") is entered into pursuant to §§ 104(a), (c)(2), (c)(3), (c)(5), and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et-seq. as amended to date; the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, (hereinafter referred to as the "NCP"); and other applicable Federal regulations, including 40 C.F.R. Part 35, Subpart O (Cooperative Agreements and Superfund State Contracts for Superfund Response Actions), and 40 C.F.R. Part 31.

2. PURPOSE

This Contract is an agreement between the United States Environmental Protection Agency ("EPA") and the Oklahoma Department of Environmental Quality (ODEQ) hereinafter EPA and the ODEQ may be referred to collectively as the "parties" or individually as the "party") pursuant to 40 C.F.R. § 300.180. The Governor has designated the ODEQ to interact with the EPA on behalf of the State of Oklahoma ("the State") concerning response actions at the Tar Creek Superfund Site, Operating Unit 4 (OU-4) of Ottawa County, Oklahoma (the "Site"). This Contract documents the responsibilities of the Lead Agency (EPA) and of the Support Agency (ODEQ) during the CERCLA response action, and includes clauses that outline the basic purpose, scope, and administration of the Contract. The purpose of this SSC is two fold. First, this SSC obtains the necessary CERCLA assurances, pursuant to CERCLA §§ 104(c) (3), 104(c) (9), and 104(j). These assurances have been separated into clauses and placed consistent with their content, and the CERCLA assurance clauses are clearly marked as such in their titles. Secondly, the ODEQ is required to provide certain assurances including, but not limited to, that the ODEQ will pay to the EPA a portion of the costs of the remedial action to be taken at the Site. Pursuant to CERCLA § 121 (f), and 40 C.F.R. § 300.515(g), this Contract sets forth the ODEQ's involvement in the remedial action at the Site. Further, pursuant to CERCLA § 104(c) (5), and 40 C.F.R. § 35.6285, this Contract establishes and clarifies credit provisions for State-funded remedial action activities by the ODEQ at the Site.

The ODEQ is entering into the SSC for the purpose of enabling the remediation of the Site OU-4 to proceed as expeditiously as possible, and the execution of the SSC shall not be deemed or construed as a waiver of any position taken by State or other States in the NCP and 40 C.F.R. Part 35, Subpart O consolidated appeals. The ODEQ shall abide by the EPA's construction, subject to a final judicial ruling on the interpretation of these regulations. This document constitutes an SSC for implementation of the current Record of Decision (ROD) for OU-4 dated 02/20/2008 (attached as Appendix 2) for the Site.

3. DURATION OF THIS CONTRACT

This Contract is effective upon execution by the EPA and the ODEQ, and shall remain in effect, with the exception of the CERCLA operation and maintenance assurance, until the remedial action at the Site is technically complete and/or the final reconciliation of remedial action costs for the Site has been satisfied (See Reconciliation Provision, Section 38, below), whichever is longer. The EPA and the ODEQ may agree to extend, by amendment (See Amendability, Section 37, below), the duration of this Contract when the remedial action for the project takes additional time, when more time is needed for closeout, or when more time is needed for reconciliation.

4. DESIGNATION OF PRIMARY CONTACT AND THEIR RESPONSIBILITIES

A. EPA has designated:

Ursula Lennox
Remedial Branch (6SF-RL)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
(214) 665-

to serve as Remedial Project Manager ("RPM") for this Contract. The designated RPM may be changed by letter to the ODEQ signatories and incorporated by reference herein without amending this Contract.

B. The ODEQ has designated:

Dennis Datin
Site Remediation Section
Land Protection Division
Oklahoma Department of Environmental Quality
707 N. Robinson
PO Box 1677
Oklahoma City, OK 73101-1677
(405) 702-5125
Dennis.datin@deq.ok.gov

to serve as the State Project Manager ("SPM") for this Contract. The designated SPM may be changed by letter to the EPA signatories and incorporated by reference herein without amending this Contract.

C. The RPM and the SPM may make necessary project changes that do not substantially alter the scope of the remedial action at the Site or increase the cost of the remedial action. Significant changes will be documented in writing.

Any disagreement between the RPM and the SPM shall be resolved in accordance with the Issue Resolution Section (Section 36), set forth below.

5. EPA RESPONSIBILITY

A. The EPA will consult with the ODEQ on matters relating to the implementation of work in the Record of Decision (ROD) and any amendments thereto.

B. The EPA or its agent shall arrange for the services of contractors to do the work described in the ROD and shall make all payments to the contractor for that work. The EPA, at its own cost and expense, shall furnish the necessary personnel, materials, services, and facilities to perform its responsibilities under this Contract.

The EPA or its agent shall manage the contractors to gain best value, e.g., control costs while achieving objectives.

C. In conducting the work described in the ROD for this Contract, the EPA and its representatives will comply with the approved ROD; all applicable, relevant, and appropriate EPA and State standards, as required by law; and to the maximum extent possible, EPA policy including the manual Superfund Remedial Design and Remedial Action Guidance published by the Office of Emergency and Remedial Response (OERR) in June 1995.

D. The EPA will inform the ODEQ of its intent to make any changes in the remedial action that are within the scope allowed in the ROD for this Site. Approval for significant changes in the remedial action beyond that outlined in the ROD requires amendment of the ROD, and this Contract must be amended prior to expenditure of funds requiring State match contribution.

F. The EPA will submit all draft and final plans, reports, and/or modifications to the ROD which affect the cost agreed to by the ODEQ to the SPM for review, comment, and approval prior to issuance or implementation. Final plans, reports, and/or modifications which affect costs require amendment of this contract pursuant to Amendability, Section 37, below.

G. The EPA agrees to submit progress reports to the SPM that detail technical progress of the project, and major changes to the project. The EPA RPM and the SPM will negotiate a schedule for submittal of the progress reports.

When the remedial action work commences, the EPA will provide the ODEQ with quarterly reports on remedial action costs.

6. ODEQ RESPONSIBILITY

A. The ODEQ has provided documentation to the EPA as necessary to prove the State of Oklahoma is in compliance with the twenty (20) year waste capacity requirement pursuant to CERCLA § 104(c)(9) and 40 C.F.R. § 300.510 of the NCP.

B. If off-site storage, destruction, treatment, or disposal is required, the ODEQ must assure the availability of a hazardous waste disposal facility that is in compliance with Subtitle C of the Solid Waste Disposal Act and is acceptable to the State.

C. The ODEQ's initial remedial efforts for the Site will be documented and agreed upon with the EPA's representatives consistent with limitations on recognizing State efforts for out of pocket cash expenditures or credit under CERCLA § 104(c)(5) and 40 C.F.R. 35.6285(c).

7. NEGATION OF AGENCY RELATIONSHIP

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between the EPA and the ODEQ. Any standards, procedures, or protocol prescribed in this Contract to be followed by the EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by the Contract and do not constitute a right to control the actions of the EPA. The EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the ODEQ in any matter relating to the subject matter of this Contract, and the ODEQ (including its employees, agents and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to this Contract.

8. SITE DESCRIPTION

A description of the Site, including the location, background of events, physical characteristics (i.e., Site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at the site conducted by the EPA, the ODEQ, or others and the response action contemplated is included in the ROD for the Remedial Action at the Site.

9. STATEMENT OF WORK (SOW)

This response action is to remediate certain areas within the definition of OU4. The total project cost is estimated at \$20,000,000. ODEQ is responsible for 10% of the fund-financed projects of true orphan share properties. True orphan share means locations, piles, properties, etc, that are not associated in any way with current or past leases or operations by viable mining companies, or that are or were managed by Indian tribes or the Department of Interior on behalf of tribes or tribal members on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation) or

otherwise within the borders of an Indian reservation. The state share of the fund-financed work has a ceiling of \$2,000,000.

10. PROJECT SCHEDULE

A general description of the work to be performed at the site is included in the Statement of Work in Appendix 1. The project schedule may be adjusted by the joint authority of the RPM and the SPM, without a formal amendment, unless there is an extended delay to the schedule. Changes that increase the project costs, or alter the scope of work, thereby affecting the ODEQ's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate a written amendment to this Contract (see Amendability, Section 37, below).

11. EPA SITE ACCESS

A. Site Access

The EPA or ODEQ shall use its own authority to secure access to the Site, as appropriate. The EPA may require assistance from the ODEQ. As requested by the EPA, the ODEQ shall assist the EPA in obtaining any permits that are necessary to satisfactorily complete the described activities.

B. ODEQ Access

Representatives of the ODEQ shall have access to the Site to review work in progress and shall comply with the Site safety plan. The ODEQ and the EPA may coordinate visits to the Site in advance.

C. EPA Liability Waiver

The EPA shall not be responsible for any harm to any of the ODEQ representatives or other person arising out of, or resulting from, any act or omission by the ODEQ in the course of a visit to the Site by the ODEQ.

D. ODEQ Liability Waiver

The ODEQ shall not be responsible for any harm to any of the EPA representatives or other person arising out of or resulting from any act or omission by the EPA in the course of a visit to the Site by the EPA.

12. SITE SAFETY PLAN

The EPA will be responsible for the development and implementation of the Site safety plans for this project. The Site safety plans will be consistent with the requirements of the NCP and applicable Federal and State safety standards and guidance.

13. THIRD PARTIES

A. Exclusion of Third-Party Benefits

This Contract benefits only the ODEQ and the EPA. It extends no benefit or right to any third party that is not a signatory to this Contract.

B. Liability

The EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. §§ 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

14. EMERGENCY RESPONSE ACTIVITIES

Any emergency response activities, including removals, conducted pursuant to the NCP shall not be restricted by the terms of this Contract. The EPA, in consultation with the ODEQ, may suspend or modify the remedial activities defined in the ROD for this Contract during and/or subsequent to any emergency response actions, in which case the response activities, cost share, or terms may be subject to amendment.

15. STATE REVIEW

The State shall review and provide comment, if necessary, on matters relating to the implementation of the remedial action, pursuant to this SSC, within thirty (30) calendar days of receipt of the documents, unless a different time period is otherwise specified in this SSC.

16. TECHNICAL REPORTS

The EPA agrees to submit technical reports to the SPM as they are developed. Technical reports may be supplied in draft, and finalized during the remedial action process, detailing technical progress of the project, problems and delays, changes in the execution of the remedial action, and other information as specified herein. The RPM and the SPM will negotiate a schedule for submittal of all such reports, which may be prepared in conjunction with contractors' support at the Site.

17. RECORDS ACCESS

At the EPA's request and to the extent allowed by State law, the ODEQ shall make available to the EPA any information in its possession concerning the Site. At the ODEQ's request and to the extent allowed by Federal law, the EPA shall make available to the ODEQ any information in its possession concerning the Site. The recipient of any records must comply with the requirements regarding records access described in 40 C.F.R. § 31.42(e). The recipient of any records must also require its contractor(s) to comply with the requirements regarding records access described in 40 C.F.R. § 31.36(i) (10). The EPA shall not disclose information submitted by the ODEQ under a claim of confidentiality unless the EPA is required to do so by Federal law and has given the ODEQ advance notice of its intent to release that information. Absent a prior confidentiality claim by the ODEQ, and with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, the EPA may make said information available to the public without further notice.

The ODEQ shall not disclose information submitted by the EPA under a claim of confidentiality unless the ODEQ is required to do so by law and has given the EPA advance notice of its intent to release the information.

18. RECORDS RETENTION

All financial and programmatic records, supporting documents, statistical records, and other records related to the Site must be maintained by the ODEQ for a minimum of ten (10) years following the submission of the final Financial Status Report to the EPA as described in 40 C.F.R. § 35.6705. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained by the ODEQ until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later. Microfilm copying must be performed in accordance with the technical regulations and records management procedures contained in 36 C.F.R. Part 1230 and the EPA Order 2160. The ODEQ will provide written notice to the RPM of its intent to destroy any original records. The RPM will respond to the ODEQ within thirty (30) calendar days concerning the destruction of the original records. The requirements of 40 C.F.R. § 35.6705(b) apply, i.e., "The recipient... must obtain written approval from the EPA award official (Superfund Division Director) before destroying any records."

19. STATEMENT OF INTENTION TO FOLLOW EPA POLICY AND GUIDANCE

In addition to the requirements specified in CERCLA and the NCP, all applicable program requirements (policy and guidance) identified in the ROD for the Site, shall be adhered to by the ODEQ under this Contract.

20. COMMUNITY RELATIONS

The ODEQ and the EPA agree that community relations activities at the Site will be conducted, consistent with the NCP, in accordance with the approved community relations plan with the EPA as the lead agency. In conducting community relations activities pursuant to this Contract, the EPA and the ODEQ agree to comply with all relevant EPA policy and guidance on community relations programs and procedures in effect upon execution of this Contract. Any new changes to the EPA policy and guidance on community relations programs and procedures will be discussed and addressed at the time they become effective.

21. SUPPORT AGENCY COOPERATIVE AGREEMENTS (SACA)

The ODEQ has been awarded CERCLA Support Agency funds from the EPA to facilitate State involvement in activities at the Site. In performing such tasks, the ODEQ shall coordinate closely with the RPM for this Contract. Funding for SACA tasks shall not change the contractual relationship between the EPA, the ODEQ, and the remedial response contractors in any way to authorize the ODEQ to direct the work of the EPA and/or its response contractors and subcontractors.

22. FINANCIAL RESPONSIBILITIES OF THE PARTIES

A. CERCLA Assurance: Cost Share

1. The EPA will pay ninety (90%) percent of the cost of the remedial action items implemented on the site described in the ROD, and to be more explicitly described in the Remedial Design on a parcel by parcel basis, including change orders and claims agreed to by the EPA and the ODEQ. This includes cost incurred during the operational and functional (O&F) period. The total cost of the portion of the remedial action, contemplated in the Remedial Design, is approximately \$20,000,000.
2. Based on that amount, ODEQ's 10% share of costs is approximately \$2,000,000 which shall only be used to match work on true orphan shares including change orders and claims agreed to by the EPA and the ODEQ on true orphan shares and costs on same incurred during the O&F period. The ODEQ's payment for remedial action on true orphan shares may be in cash, credit, or in-kind services and shall include services and costs incurred by the State for OU-4 Oklahoma Tar Creek Buyout Cooperative Agreement.

In accordance with the Oklahoma Constitution, Article 10 § 15, nothing in this contract shall commit the State to the payment of money beyond funds then appropriated and encumbered pursuant to law for the purposes specified in this contract. This shall not limit interest payments.

The ODEQ will not be responsible for any portion of the EPA's intramural costs in accordance with CERCLA Section 104(c) (3). The ODEQ will be responsible for one

hundred (100%) percent of the operation and maintenance (O&M) costs related to true orphan share remedial action, in accordance with CERCLA Section 104(c)(3). If a common repository is established for all site wastes, then the ODEQ will pay 10% of the apportioned true orphan share (as defined in paragraph #9) of the O&M costs.

3. EPA will track and reconcile expenditures on a parcel by parcel basis in a manner that allows ODEQ to determine that the expenditure is allocated to a true orphan share. EPA shall provide ODEQ estimates of cost share obligations on a semi-annual basis and will provide an estimate of the cumulative total on an annual basis. EPA will submit invoices to ODEQ on a semi-annual basis for review and approval. These invoices will show total costs, Federal cost share, and the State cost share. The invoices will also include cost documentation on a parcel by parcel basis demonstrating that the expenditure invoiced is allocated to a true orphan share. The invoice will be compiled and mailed to the ODEQ six months from the first period of performance of the remedial action contract. The due date for payment will be sixty (60) calendar days after billing or a mutually agreed time, following the procedure outlined above until the provisions of the SSC are met. The ODEQ will make payments or apply credit only upon receipt of a proper invoice. A proper invoice will include sufficient information on cost for the ODEQ to determine that it is paying for true orphan shares.

If it is determined that the ODEQ paid for work that was not true orphan share, the EPA will refund or credit the ODEQ the appropriate amount.

All EPA invoices shall be sent to the Director of the Land Protection Division, ODEQ as specified below, with a copy to the SPM at the address indicated in Paragraph 4(B) of this Contract:

Scott Thompson
Division Director
Land Protection Division
ODEQ
Box 1677
Oklahoma City, OK 73101-1677

B. State Payments to EPA

All State payments shall be made payable to the EPA and sent to the Regional Financial Management Office as specified below, with a copy to the RPM at the address indicated in Paragraph 4(A) of this Contract:

United States Environmental Protection Agency – Region 6
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Or via Automated Clearinghouse (ACH also known as REX or remittance express), complete information is listed below:

PNC Bank
808 17th Street, N.W.
Washington, D.C. 20074
Contact Person: Jesse White at 301-887-6548
ABA: 051036706
Transaction Code 22 checking
Environmental Protection Agency Account 310006
CTX Format

To ensure proper credit to the account, the words "Tar Creek Superfund Site, Ottawa County, Picher, Oklahoma must appear on the face of the check.

C. State Claims and Credits

State claims for credit must be submitted to the EPA in accordance with regulations provided in 40 C.F.R. Part 35, Subpart O, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions. The amount of credit is limited to site-specific expenses that the EPA has determined to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds for the remedial action. A cost package supporting the State's expenditures on remedial action activities on the Site will be provided to the EPA within ninety (90) calendar days after receipt of each semi-annual EPA billing package.

The following information must be included in the State's cost package and provided to the EPA when credit is claimed: 1.) An accounting system report summarizing specific dollar amounts charged to remedial action activities and supported by cost documentation including, but not limited to, time sheets, travel vouchers and contractor invoices. 2.) Certification of the cost package (signed by the ODEQ's fiscal manager) that the credit amount claimed has not been previously reimbursed or been used for matching purposes under any other Federal program grant. Refer to 40 C.F.R., Part 35, Subpart O, for other credit submission requirements. All State claims for credit are subject to EPA verification and approval. The State may not transfer remaining credits to or from another site, unless the EPA gives prior, written approval.

Costs incurred by the State to offset the cost-share requirements must be verified by the ODEQ, and identified in the SOW. An in-kind match is a prohibited form of payment in an SSC unless the ODEQ has entered into a support agency Cooperative Agreement with the EPA in compliance with 40 C.F.R. § 35.6815(a)(1). Payment terms may be adjusted only through an amendment to this Contract, as specified in the Amendability Section (Section 37), below.

D. Interest

In the event the EPA does not receive a semi-annual payment or acceptable credit within ninety (90) calendar days from the billing date outlined in the invoice, interest shall accrue from the invoice date in accordance with 40 C.F.R. § 31.52 and 40 C.F.R. § 35.6815. Interest will be charged at the rate established for the Superfund Trust Fund, in accordance with the EPA Resource Management Directives System, Chapter 14, "Superfund Accounts Receivable and Billings."

The due date is the date or dates specified in this Contract unless the State invokes the provisions of Section 36, Issue Resolution, set forth in this Contract. If issue resolution is invoked, for purposes of interest calculation, interest will accrue on the unpaid portion of the final resolution amount, beginning on the established invoice date above.

E. Completion of Work

Upon completion of the work defined in the ROD, including completion of the O&F period, the EPA shall provide the ODEQ with documentation of contractor costs, for contractors retained by the EPA to perform the work in the ROD and during the O&F period, including change orders and claims. In addition to identifying the State cost share, the EPA will identify and apply use of State credit pursuant to CERCLA § 104(c) (5). Final reconciliation of costs will be made at that time.

23. DESIGN REVIEWS

The EPA will submit the remedial action design to the ODEQ for review and comment at various points in its development. These may include: (1) preliminary design; (2) intermediate design; and (3) pre-final Superfund design. EPA will provide ODEQ adequate documentation to determine the true orphan share status of any given property. The EPA will provide the ODEQ a maximum of seven working (7) days for ODEQ's review and comment. The EPA will accommodate the ODEQ comments to the extent practicable.

24. CERCLA ASSURANCE: 20-YEAR WASTE CAPACITY ASSURANCE

The ODEQ has submitted its Waste Capacity Assurance Plan to the EPA. The EPA deemed this Waste Capacity Assurance Plan adequate, pursuant to CERCLA § 104(c) (9), 40 C.F.R. § 300.510, and 40 C.F.R. § 35.6105 on April 28, 1994. The ODEQ assures the availability of hazardous waste treatment or disposal facilities for the next 20 years, following signature of this Contract, pursuant to CERCLA § 104(c)(9).

25. CHANGE ORDER AND CLAIMS MANAGEMENT

The EPA or its agent(s) will conduct technical and administrative reviews of any contractor change order requests or claims. These reviews will examine the technical basis for the change order or claims and will determine whether they are merited. If any

requested change orders/claims would alter the remedial action, as approved in the ROD(s) for this Site, the EPA will consult with the ODEQ.

26. PRE-FINAL INSPECTION

A. A pre-final inspection for construction completion will be conducted upon preliminary construction completion for the EPA-lead remedial action at the Site. The pre-final inspection will be led by the RPM. Participants, to accompany the RPM, include the SPM, the remedial action contractor, the EPA oversight contractor, and all other appropriate parties as determined by the RPM. The EPA will provide the ODEQ ten (10) working days advance notice of, and an agenda for, this meeting.

B. The pre-final inspection will consist of a walk-through inspection of the entire project Site. This inspection will survey the completed Site construction work, determining whether the project is complete and consistent with the contract documents and the EPA approved remedial action. Jointly, the EPA and the ODEQ will determine if there are any outstanding construction items. An attempt shall be made to resolve all remaining issues.

C. The contractor(s) shall have certified that all equipment has performed in a manner which meets the purpose and intent of the design specifications. Retesting shall have been successfully completed where deficiencies were revealed.

D. A pre-final inspection report will be provided by the EPA to the ODEQ for review. This report will outline outstanding construction issues, actions required to resolve them, and anticipated completion dates for these actions. The ODEQ will return any comments to the EPA RPM within fifteen (15) working days. Acceptance of the resolutions specified in the pre-final inspection report is constituted by the ODEQ's signature on the report.

27. JOINT FINAL INSPECTION

A. Final Inspection

Following completion of construction for remedial action, the ODEQ, the EPA, the remedial action contractor, and the EPA oversight contractor will jointly inspect the project to confirm that all outstanding construction issues are resolved. The final inspection will be led by the RPM. Participants, to accompany the RPM, include the SPM and all other appropriate parties as determined by the RPM. The final inspection will consist of a walk-through inspection of the project Site, with the inspection focusing on the outstanding construction items identified in the pre-final inspection.

B. Final Inspection Report

The EPA will prepare a report of the Site upon satisfactory completion of the final inspection for construction completion. The EPA will provide a copy of the final inspection report to the ODEQ SPM within sixty (60) calendar days after the joint

EPA/ODEQ inspection. This report shall contain material which describes outstanding construction items from the pre-final inspection and will indicate what items were resolved; shall summarize work defined in the Statement of Work for the Contract and certify that this work was performed; shall explain any modifications to the Statement of Work and why these were necessary for the project; and shall certify that the remedial action is functional.

28. ACCEPTANCE OF THE REMEDY

The EPA acceptance of the remedial action shall be provided to the ODEQ with the final inspection report. The ODEQ shall have thirty (30) working days for review, comment, and approval of the final inspection report. Concurrence with the EPA's acceptance will signify the ODEQ's acceptance of the remedial action. The ODEQ will not accept responsibility for O&M until all phases of the remedial action are complete. The ODEQ's responsibility is for O&M for remedies on true orphan share property. If a common repository is established for all site wastes, then the ODEQ will pay 10% of the apportioned true orphan share (as defined in paragraph #9) of the O&M costs.

29. PROJECT CLOSEOUT

The EPA, in consultation with the ODEQ, will determine when the Fund-financed remedial action has been completed. Enforcement actions and other necessary activities, such as deletion of the Site from the National Priorities List, may proceed independently of project closeout.

30. DETERMINE OPERABILITY

A. Operation and Maintenance

The ODEQ will not be responsible for any remedy that is not on true orphan share property. ODEQ will be responsible for one hundred (100%) percent of all operation and maintenance (O&M) costs on true orphan share remedies. The ODEQ's O&M responsibilities begin once the remedy has achieved the remedial action objectives and remediation goals in the ROD, and the remedy is considered to be functioning properly.

31. RESPONSIBLE PARTY ACTIVITIES

If the EPA reaches an agreement with any responsible parties to undertake all or part of the remedial activities described in the ROD(s) for this Contract, the Contract shall be amended to revise the SOW to delete that portion of work as stated in the settlement with responsible parties.

32. TRANSFER OF GUARANTEES AND WARRANTIES

Upon the ODEQ's acceptance of the remedial action and assumption of responsibility for O&M on true orphan share parcels, all guarantees and warranties associated with the remedial action on true orphan share parcels shall be transferred to the ODEQ's possession. The EPA shall provide for such transfer in all agreements for the remedial action negotiated with response contractors.

33. NPL DELETION

Upon obtaining concurrence from the ODEQ, the EPA shall prepare the deletion package to delete the Site from the NPL. The ODEQ must concur with the EPA's intent to delete the Site prior to publication of a notice to delete.

34. ENFORCEMENT, LITIGATION, AND COST RECOVERY

A. Notice of Intent to Settle or Initiate Proceedings

The EPA and the ODEQ may be entitled to assert claims against a third party (herein referred to as the potentially responsible party or "PRP") for reimbursement of any services, materials, monies or other things of value expended by the EPA or the ODEQ for Fund-financed response activity.

The parties shall promptly inform one another on the status of negotiations. Neither the EPA nor the ODEQ shall enter into a settlement with or initiate a judicial or administrative proceeding against any PRP for the recovery of such sums, except after having given notice in writing to the other party to this Contract, at least thirty (30) calendar days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings.

B. Cooperation and Coordination in Cost Recovery Efforts

With respect to remedial actions, the EPA and the ODEQ agree that they shall cooperate in and coordinate efforts to recover their respective costs of response actions taken at the Site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.

C. Location of Judicial Action

The EPA and the ODEQ agree that any judicial action taken by either party pursuant to CERCLA against a potentially responsible party for recovery of any sums expended in response actions at the Site described herein shall be filed in the United States District Court for the judicial district in which the Site is located, or in such other judicial district

of the United States District Courts as may be authorized by § 113 of CERCLA and agreed to in writing by the parties to this Contract.

D. Non-waiver of Rights

The ODEQ understands that the EPA cannot waive its right to recover all CERCLA-funded expenditures, including those for this Site.

E. Litigation under CERCLA Sections 106 and 107

Signature of the Contract does not constitute a waiver of the EPA's right to bring an action against any person or persons for liability under §§ 106 or 107 of CERCLA, or any other statutory provision or any other law or regulation.

35. FAILURE TO COMPLY WITH TERMS OF THE CONTRACT

If the ODEQ fails to comply with the terms of this Contract, any CERCLA assurance, and/or the negotiated payment terms, the EPA, after providing sixty (60) calendar days notice, may proceed under the provisions of § 104(d) (2) of CERCLA and may seek in the appropriate court of competent jurisdiction to enforce this Contract or to recover any funds advanced or any costs incurred due to a breach of the Contract. If the EPA fails to comply with any requirements of this Contract, the ODEQ, after providing sixty (60) calendar days notice, may seek in the appropriate court of competent jurisdiction to enforce the Contract or recover any funds advanced or any costs incurred due to a breach of the Contract.

36. ISSUE RESOLUTION

In the event of a dispute arises between EPA and the ODEQ regarding the remedial action at the site or any term or condition of this Contract, the RPM and the SPM will seek resolution through meeting as many times as necessary to discuss and attempt to resolve any such issues that may exist. If the issue is not resolved through these meetings, the RPM and the SPM will seek resolution in a higher chain of command. Note that matters unrelated to this SSC, such as those between the State and other Federal agencies, are not subject to the terms of this Contract, since the SSC is a bilateral agreement between the EPA Region 6 and the State.

When the issue is referred to a higher level of authority, the issue will be submitted in writing as soon as practicable (but in no event later than ten (10) working days after the failure to agree) to the Associate Director, Remedial Branch, Superfund Division, U.S. EPA Region 6 and the Environmental Programs Manager, Site Remediation Section, Land Protection Division, ODEQ. Should they be unable to agree within ten (10) working days, the matter shall be elevated to the Director, Superfund Division, EPA Region 6, and to the Director, Land Protection Division, ODEQ. If the dispute is not resolved at this level of authority within twenty (20) working days, the matter shall be referred to the Regional Administrator of the EPA Region 6 and to the Executive

Director, ODEQ. In the event that the Regional Administrator and the Executive Director, ODEQ, are unable to resolve the issue or dispute, the EPA and the ODEQ shall retain any authority they may have under Federal or State laws.

37. AMENDABILITY

This Contract may be amended at any time for reasons including, but not limited to, the revision of costs or terms to undertake modifications to the remedial action. Written amendments are required when alterations to CERCLA-funded activities are necessary, or when alterations impact the State's assurances pursuant to the NCP and CERCLA.

Such amendments must include a Scope of Work for the amendment. Any change(s) in this SSC must be made in writing and agreed to by both the ODEQ and the EPA, except as provided in this Contract, and must be reflected in all response agreements affected by the change(s).

38. RECONCILIATION PROVISION

This Contract shall remain in effect until the financial settlement of project costs and final reconciliation of response costs (including change orders, claims overpayments, reimbursements, etc.) have been completed, pursuant to 40 C.F.R. § 35.6805(k), the EPA and the ODEQ have satisfied its proportional cost-share payments of the 90/10 split of true orphan share remedies, supra as specified in the payments clauses above. Final reconciliation of all remedial action costs is not contingent upon deletion of the Site from the NPL.

39. TERMINATION OF THIS CONTRACT

This Contract shall terminate under any of the following circumstances:

A. Termination may occur for cause, conclusion, or failure to comply. The parties may enter into a written termination agreement, which will establish the effective date for the termination of this Contract, the basis for settlement of termination costs, and the amount and date of any sums due either party. Such reconciliation costs will include all project costs incurred, as well as any close-out costs; or

B. If, at any time during the period of this Contract, performance of either all or part of the work described in the SOW is voluntarily undertaken, or undertaken for any other reason by persons or entities not party to this Contract, then this Contract will be modified or terminated as appropriate to allow these actions. Upon modification or termination, the parties to this agreement shall be relieved from further duties to perform those actions undertaken by persons or entities not party to this Contract; or

C. (1) Response activities at the Site have been satisfactorily completed and payments have been made, as specified under this Contract, and

(2) All State cost-share payments have been submitted to the EPA, responsibility for O&M has been undertaken by the State, and, if applicable, interest in real property has been accepted by the State, pursuant to 40 C.F.R. § 35.6805(i)(4), and

(3) The EPA Financial Management Officer (FMO) has a final accounting of all project costs, including change orders and contractor claims, and

(4) A final cost reconciliation is made in accordance with Section 38 (Reconciliation Provision) of this Contract, and

(5) The EPA provides written notice to the ODEQ.

40. APPENDICES

Appendix 1 – Statement of Work (SOW)

Appendix 2 – Record of Decision


Appendix 3 - Description, cost estimate and appraisal of in-kind services toward state 10% match for Remedial Action

41. EXECUTION

In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original. The undersigned representative of each party to this Contract certifies that he or she is fully authorized by the U.S. Environmental Protection Agency or the State of Oklahoma, respectively, to enter into the terms and conditions of this Contract and to execute and legally bind that party to it.

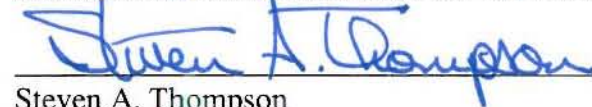
This Contract and its attachments constitute the complete agreement of the parties, and there are no other agreements, oral or otherwise, upon which any party relies.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Samuel Coleman, P.E.
Director, Superfund Division

9/11/09
Date

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY


Steven A. Thompson
Executive Director

9-11-09
Date